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FROM: BRENT SCOWCROFT
TO: GOMPERT FOR THE
SECRETARY

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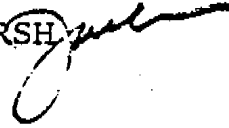
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SECRET

THE WHITE HOUSE

WASHINGTON

April 4, 1975

MEMORANDUM FOR: THE PRESIDENT
THROUGH: DON RUMSFELD
FROM: JACK MARSH 

It has been determined that the reporting requirements of Section 4A (2) of the War Powers Resolution requiring reporting to the Speaker and the President Pro Tempore should be observed. They are applicable for the reasons set out in the attached draft of a letter accompanying this memo. Attached are the applicable provisions of the War Powers Resolution.

This report must be made by you to these two Congressional officers within 48 hours from the time of the incident that invokes the statute. This occurred at 0400 a.m., EDT, April 3. Therefore, this report must be filed by you no later than 0400 a.m., April 5. Brent has sent a similar draft of the attached to Henry at Palm Springs. We will stand by for your response and suggestions as well as any changes which you feel should be made in the attached report.

You should be aware that John Finney of the New York Times has the story of this incident, which apparently involved the USS Durham, and has made inquiry to the Department of Defense. Defense is awaiting guidance on how to respond to both the activities of the vessel and your possible action under the War Powers which were the questions Finney asked.

The determination of the application of the War Powers is based on the opinion of the Counsel's Office at: The White House; Defense; and State. The draft letter is their joint effort.

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THE WHITE HOUSE

WASHINGTON

April 4, 1975

Dear Mr. Speaker: + (Pres. don't pro tampona)

As you know, last Saturday I directed United States participation in an international humanitarian relief effort to transport refugees from Danang and other seaports to safer areas farther south in Vietnam. The United States has been joined in this humanitarian effort by a number of other countries who are offering people, supplies and vessels to assist in this effort. This effort was undertaken in response to urgent appeals from the Government of the Republic of Vietnam because of the extremely grave nature of the circumstances involving the lives of hundreds of thousands of refugees. This situation has been brought about by large-scale violations of the Agreement Ending the War and Restoring the Peace in Vietnam by the North Vietnamese who have been conducting massive attacks on the Northern and Central provinces of South Vietnam.

In accordance with my desire to keep the Congress fully informed on this matter, and taking note of the provision of Section 4(a)(2) of the War Powers Resolution (Public Law 93-148), I wish to report to you concerning one aspect of United States participation in the refugee evacuation effort. Because of the large number of refugees and the overwhelming dimensions of the task, I have ordered U. S. naval vessels to assist in this effort, including Amphibious Task Group 76.8 with 12 embarked helicopters and approximately 700 marines. These naval vessels have been authorized to approach the coast of South Vietnam to pick up refugees and U. S. nationals, and transport them to safety. Marines are being detailed to vessels participating in the rescue mission. The first vessel entered South Vietnam territorial waters at 0400 a.m. EDT on April 3, 1975.

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Although these forces are equipped for combat within the meaning of Section 4 (a) (2) of Public Law 93-148, their sole mission is to assist in the evacuation including the maintenance of order on board the vessels engaged in that task.

As stated above, the purpose of the introduction of United States naval vessels into Vietnamese waters is to assist in an international humanitarian effort involving vessels of several nations, including both military and civilian craft. The United States' participation in this effort includes the charter of commercial vessels, the use of military sealift command vessels with civilian crews, as well as United States naval vessels with military crews. This effort is being undertaken pursuant to the President's constitutional authority as Commander-in-Chief and Chief Executive in the conduct of foreign relations and pursuant to the Foreign Assistance Act of 1961, as amended, which authorizes humanitarian assistance to refugees, civilian war casualties and other persons disadvantaged by hostilities or conditions relating to hostilities in South Vietnam.

You will appreciate, I am sure, my difficulty in telling you precisely how long United States forces may be needed in this effort. Our present estimate, however, is that this operation may involve the presence of United States naval vessels in Vietnamese waters for a period of at least several weeks.

Public Law 93-110

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CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced --

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances:

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) In numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth--

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and,

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.